

In the Matter of Merchant Mariner's Document No. Z-65041-D1
Issued to: JAMES BROWN

DECISION AND FINAL ORDERS OF THE COMMANDANT
UNITED STATES COAST GUARD

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JAMES BROWN

In the Matter of Merchant Mariner's Document No. Z-65041-D1
Issued to: JAMES BROWN

In the Matter of Merchant Mariner's Document No. Z-153332-D1
Issued to: ALFRED U. SCOTT

These appeals have been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By separate orders dated 17 September, 1954, an Examiner of the United States Coast Guard at New York, New York, revoked or suspended Merchant Mariner's Documents Nos. Z-65041-D1 and Z-153332-D1 issued to James Brown and Alfred U. Scott, respectively, upon finding them guilty of misconduct based upon individual specifications alleging in substance that while serving as Officer's Bedroom Steward and Captain's Steward, respectively, on board the American SS INDEPENDENCE under authority of the documents above described, on or about 10 September, 1954, while said vessel was at sea, they wrongfully engaged in a fight and used dangerous weapons to inflict bodily injuries upon each other. The specification against Appellant Brown's document alleged that the dangerous weapon which he used was a beer can opener. The specification pertaining to Appellant Scott alleged that he inflicted injuries with a piece of pipe about two feet long.

At a hearing, held in joinder, Appellant's were given a full explanation of the nature of the proceedings, the rights to which they were entitled and the possible results of the hearing. Although advised of their right to be represented by counsel of their own selection, both Appellants voluntarily elected to waive that right and act as their own counsel. Each Appellant entered a plea of "guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the Third Steward who was in charge of all of the Officers' stewards and who witnessed the latter part of the fight between the Appellants. Although both Appellants had entered pleas of "guilty", this testimony was taken in order to adequately present the conduct of the Appellants at the time in question. See 46 C.F.R. 137.09-50(b). The Investigating Officer also placed in evidence two pertinent logbook entries and the weapon used by Scott.

Each Appellant submitted a short statement in mitigation. Brown stated that he and Scott were, and still are, good friends but they were temporarily overheated. Scott stated that both he and Brown had committed a crime but added that in his 22 years at sea he never before had trouble and had often walked away from things like this in order to preserve his clear record.

At the conclusion of the hearing, having given the parties an opportunity to present argument and submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved against both Appellants by their pleas to the specification. The Examiner then entered the orders revoking Appellant Brown's Merchant Mariner's Document No. Z-65041-D1 and suspending Appellant Scott's Merchant Mariner's Document No. Z-153332-D1 for a period of 24 months - 12 months outright suspension from 17 September, 1954, and 12 months probationary suspension until a period of 18 months after the date of termination of the outright suspension. These orders were also directed against all other licenses, documents and certificates issued to Appellants by the United States Cost Guard or its predecessor authority.

Appellant Brown's appeal consists of a plea for clemency on the ground that the order is too

severe in view of his many years of service. He also states that the order of revocation will cause undeserved hardship for his wife and two children. This Appellant respectfully requests modification of the order to a suspension for a definite period of time.

Appellant Scott contends that justice would best be served by granting him a new hearing on the merits because he had a valid defense but did not present it since he did not understand the nature and seriousness of the charge; he pleaded "guilty" because he was not represented by counsel to protect his best interest; and he was led to believe that he would receive no more than a short suspension. On appeal, this Appellant was represented by:

Messrs. Bickler and Smith of New York City.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 10 September, 1954, Appellants Brown and Scott were serving as stewards on board the American SS INDEPENDENCE and acting under authority of their Merchant Mariner's Documents Nos. Z-65041-D1 and Z-153332-D1, respectively, while the ship was at sea.

At about 0945 on this date, the Appellants had an argument with each other concerning the disappearance of a vacuum cleaner. They engaged in a fist fight and were separated by the Third Steward who then departed from the presence of Appellants.

A short time later, the Appellants resumed their combat with each other. Brown was armed with the type of can opener commonly used to open beer cans. Scott was fortified with a two-foot length of one-inch pipe from the Master's pantry. The scene of the struggle was in the vicinity of the Master's cabin.

The Third Steward heard the noise and sent to the scene of the fight. He grabbed the piece of pipe and called for assistance because he could not separate the Appellants. The Master came to assist the Third Steward and they succeeded in stopping the fight. Brown had used the can opener to cut Scott on the right side of the lower jaw and neck near the ear. Scott had cut Brown on the forehead over his right eye by striking him with the pipe. (Appellants' injuries were bandaged at the hearing and the evidence does not disclose the extent of the injuries to either of them.) The fight also caused some degree of damage to the ship's property. Both Appellants received medical attention before being confined to the ship's brig and they were each fined two days pay for fighting on board ship.

Appellant Brown has been going to sea for 39 years. His prior record consists of probationary suspensions in 1944 and 1945 for minor offenses as well as a three months outright suspensions plus a probationary suspension in 1952 for an "attempt to assault" a crew member with a fire axe.

Appellant Scott had a prior unblemished record during 22 years at sea.

OPINION

The points raised on Appeal by Appellant Scott are not persuasive. He specifically admitted that he had committed a "crime" (R.33) after voluntarily stating that he would speak for himself rather than being represented by counsel (R.4) and that he understood the charge and specification (R.6). This Appellant persisted in his plea of "guilty" after the significance of this plea had been fully explained to him by the Examiner. The seriousness of the allegations is obvious and there is nothing in the record to indicate that this Appellant was led to believe that the order would not exceed a short suspension. There is no likelihood that a new hearing would produce a different result since the record indicates that the Third Steward who testified was the only disinterested witness to the incident until the time of arrival of the Master. The request for a hearing de novo is denied.

Although Appellants were guilty of a serious breach of discipline by fighting with dangerous weapons which might have caused grave injuries to one or both of them, it is my opinion that the orders should be modified due to the peculiar circumstances of the case. The record is not determinative as to which, if either, of the men was the original aggressor. In fact, Appellant's pleas of "guilty" and their own statements at the hearing indicate that they both felt that they were mutually at fault. Hence, this was not a situation where one seaman was solely at fault for an unprovoked battery and where the other was justified in attempting to repulse an attack upon himself with a dangerous weapon. Apparently, there was provocation on the part of both Appellants but not to such an extent as to justify the use of a weapon by either. Consequently, the orders will be modified to impose equal responsibility for the fight upon each of the Appellants; but Appellant Brown's prior offense of this nature will be taken into consideration and, for this reason, his period of outright suspension will be greater.

ORDERS

The order of the Examiner dated at New York, New York, on 17 September, 1954, and directed against Merchant Mariner's Document No. Z-65041-D1 is modified to provide for an outright suspension of nine (9) months and an additional suspension of twelve (12) months on probation until eighteen months after the termination of the above outright suspension.

The order of the Examiner dated at New York, New York, on 17 September, 1954, and directed against Merchant Mariner's Document No. Z-153332-D1 is modified to the same extent as the above order against Merchant Mariner's Document No. Z-65041-D1 except that the period of outright suspension shall be reduced to six (6) months instead of nine (9) months.

As so MODIFIED, said orders are

AFFIRMED.

A. C. Richmond

Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 9th day of February, 1955.